

NOV 16 2007

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARIO ESTEVAN-HERNANDEZ,

Defendant - Appellant.

No. 05-50448

D.C. No. CR-04-02982-NAJ

MEMORANDUM^{*}

Appeal from the United States District Court
for the Southern District of California
Napoleon A. Jones, District Judge, Presiding

Argued and Submitted November 9, 2007
Pasadena, California

Before: B. FLETCHER and RYMER, Circuit Judges, and BEISTLINE^{**}, District Judge.

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The Honorable Ralph R. Beistline, United States District Judge for the District of Alaska, sitting by designation.

Mario Estevan-Hernandez appeals the district court's denial of his motion to suppress evidence found in his apartment and statements made after his arrest. We affirm.

Even if there were error in any of the respects cited by Estavan-Hernandez, it is necessarily harmless. He does not dispute that his arrest was based on probable cause, or that the 4.7 kilograms of cocaine in the car should have been suppressed. The conviction, therefore, stands. Regardless of whether the 27.9 kilos found in his apartment should have been suppressed, Estavan-Hernandez's possession of that cocaine would be relevant conduct. *See, e.g., United States v. Haynes*, 216 F.3d 789, 801 (9th Cir. 2000). Accordingly, there is no reasonable possibility his sentence would be affected.

AFFIRMED.